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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In Re:

Case No. 21-11271-abl  
Chapter 7

MEDOLAC LABORATORIES, A  
PUBLIC BENEFIT CORPORATION,

Debtor(s).

**MOTION TO APPROVE SETTLEMENT**<sup>1</sup>

Brian D. Shapiro, (“**Trustee**”) submits his motion to approve settlement with Doug Hughes (“**Motion**”). This Motion is based upon all pleadings on file in this case and any oral argument that this Court may permit. The Trustee respectfully requests this Court take judicial notice of the official court Docket in Debtor’s case to the extent appropriate under and permitted by FRE 201(b) and (c).

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<sup>1</sup> All references to “ECF No.” are to the numbers assigned to the documents filed in this bankruptcy case as they appear on the case docket maintained by the Clerk of the Court. All references to “Section” are to provisions of the Bankruptcy Code, 11 U.S.C. § 101, et seq. All textual references to “Bankruptcy Rule” are to the Federal Rules of Bankruptcy Procedure. All textual references to “Civil Rule” are to the Federal Rules of Civil Procedure. All references to “FRE” are to the Federal Rules of Evidence

**BACKGROUND**

1. On March 17, 2021, Medolac Laboratories, a Public Benefit Corporation (“**Medolac**”) filed a Chapter 11 Bankruptcy Petition and chose to proceed under Subchapter V of Chapter 11 (“**PetitionSee, ECF No. 1.**
2. On March 18, 2021, the United States Trustee appointed Brian D. Shapiro as the Subchapter V Trustee. See, ECF No. 7.
3. On March 19, 2021, Medolac filed an emergency motion for (a) the entry of interim and final orders authorizing the debtor to obtain senior secured, super priority post-petition financing; (b) granting liens and super priority claims; (c) approving loan documents relating to the foregoing; (d) modifying the automatic stay; (e) scheduling final hearing; (ii) authorizing the use of cash collateral or alleged cash collateral; and (iii) granting related relief. See, ECF No. 19 (referred to herein as “**DIP Financing Motion**”).
4. The DIP Financing Motion requested approval of Debtor in Possession Financing with Doug Hughes (“**Hughes**”) in an amount not to exceed \$500,000.00. Id.
5. On March 30, 2021, Medolac filed its Bankruptcy Schedules (the “**Schedules**”). See, ECF No. 50.

6. The Schedules at ECF No. 50 p. 3-10, listed a value of Medolac's assets in the amount of \$2,151,701.38 which consisted of the following:

<u>Description</u>	<u>Amount</u>
Cash in Hand	\$416.00
Cash In Bank Accounts	\$211,718.37
Deposits	\$26,936.76
Retainers for Professionals	\$30,560.50
Prepaid Health Insurance	\$6584.31
Prepaid Insurance	\$30,168.58
Property Taxes	\$8,824.29
Account Receivables	\$209,621.31
Donor Milk (cost basis)	\$469,487.67
Finished Product (cost basis)	\$63,627.62
Furniture and Fixtures (net book value)	\$12,62.00
Computer Equipment	\$5,979.94
1989 Dodge Ram 1500 Truck	\$500.00
2005 Ford F-150	\$5,000.00
Machinery and Equipment (net book value)	\$968,740.74
Shop Tools (net book value)	\$1,811.17
Laboratory Equipment (net book value)	\$93,748.12

Lease for 1031 Boulder City Pkwy.	Unknown
Claims Against Prolacta	Unknown
Claims for Collection of Receivables	Unknown
Claims arising out of intellectual property	Unknown
Potential Tax Claims and Refunds	Unknown

7. On March 30, 2021, this Court entered an interim order approving the DIP Financing Motion. See, ECF No. 52
8. On April 26, 2021, this Court entered a final order approving the DIP Financing Motion. See, ECF No. 90.
9. On May 13, 2021, Prolacta Bioscience, Inc. (“**Prolacta**”), with a request for shorten time, filed a motion to dismiss Medolac’s bankruptcy case (“**Prolacta’s Motion to Dismiss**”). See, ECF No. 124.
10. On May 14, 2021, Liquid Gold, LLC (“**Liquid Gold**”), with a request for shorten time, filed a motion to dismiss Medolac’s bankruptcy case (“**Liquid Gold’s Motion to Dismiss**”). See ECF No. 136.
11. On July 2, 2021, this Court stated its oral ruling granting both Prolacta’s Motion to Dismiss and Liquid Gold’s Motion to Dismiss for cause and converting Medolac’s bankruptcy case to one under chapter 7 of the Bankruptcy Code. See, ECF No. 234.

1 12. On July 6, 2021, Hughes, by and through counsel, advised the Debtor that it was  
2 now in default under the terms of the financing approved by this Court. A copy of  
3 the July 6, 2021, notice of default is attached hereto as **Exhibit 1**.

4 13. On July 7, 2021, this Court entered an order granting Prolacta's Motion to Dismiss  
5 but converted the case to a Chapter 7. See, ECF No. 234.

6 14. On July 7, 2021, this Court entered an order granting Liquid Gold's Motion to  
7 Dismiss but converted the case to a Chapter 7. See, ECF No. 236.

8 15. On July 8, 2021, the United States Trustee appointed Brian D. Shapiro as the  
9 Chapter 7 Trustee ("**Trustee**") of Medolac's bankruptcy case ("**Bankruptcy**  
10 **Estate**" or "**Estate**"). See, ECF No. 241.

11 16. On July 14, 2021, the Bankruptcy Estate received a notice of proposal to accept  
12 collateral in full satisfaction of secured obligations. A copy of such notice is  
13 attached hereto as **Exhibit 2**.

14 17. Upon being appointed as the Trustee, the Trustee immediately contacted Liquid  
15 Gold and Prolacta along with other entities who have previously expressed an  
16 interest in the assets of Medolac or purchasing the ongoing business of Medolac.  
17 Also, the Trustee spoke with three parties who have not appeared in the Bankruptcy  
18 Case but were inquiring into the assets of the Bankruptcy Estate. See generally,  
19 Declaration of Brian D. Shapiro.

20 18. As of the date of the filing of this Motion, neither Liquid Gold, Prolacta nor any  
21 other third party have made any offers to purchase assets of the Bankruptcy Estate.  
22 Prolacta initially advised the Trustee that it was not interested in purchasing such  
23 assets. However, after the Trustee inquired about a consent to an order shortening  
24 time to the approval of this Motion, Prolacta expressed a renewed interest in  
25 purchasing the Estate's assets. Email communications from Prolacta's counsel and  
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1 the Trustee are collectively attached hereto as **Exhibit 3**. See generally,  
2 Declaration of Brian D. Shapiro.

3 19. The main equipment that was being utilized by Medolac to produce its product are  
4 leased. Some of the leases appear to be actual purchase agreements. The Trustee  
5 has attempted to gather information as to the buyout of such leases but not all  
6 figures have been obtained. A copy of the Trustee's report is attached hereto as  
7 **Exhibit 4**. See generally, Declaration of Brian D. Shapiro.

8 20. The Trustee has recovered \$184,770.79 in cash and has determined that there are  
9 account receivables in the amount of \$131,737.20. At this time, it is unknown as  
10 to the potential of collecting such receivables. The Trustee is aware that in his past  
11 experiences, collection of receivables of a chapter 7 debtor is extremely difficult.  
12 Further, the longer the receivables age, the more difficult they become to collect.  
13 Whether the receivables are collectable based upon the type of product sold by  
14 Medolac and that its customers are medical facilities is unknown at this time. See  
15 generally, Declaration of Brian D. Shapiro.

16 21. The Trustee is confident that the equipment owned by the Bankruptcy Estate has  
17 some type of liquidation value to the Estate, but it does not appear that the value of  
18 the equipment would result in net funds to the Estate. Attached hereto as **Exhibit**  
19 **5**, is a list of assets that is owned by the Estate which reflects a "salvage" value of  
20 \$187,379.12. The equipment is located at the Debtor's leased facility. As such,  
21 the Bankruptcy Estate's administrative expense for the lease will increase the  
22 longer this equipment remains there. The true liquidation value of the equipment  
23 is not known as such value would be determined by a duly noticed auction. See  
24 generally, Declaration of Brian D. Shapiro.

1 22. The Bankruptcy Estate is also in possession of completed product that has some  
2 type of value. The Estate is in possession of 19 cases of the product known as  
3 Benefit 24, 89 cases of Benefit 20, and 77 cases of Benefit 18. Also, there are  
4 approximately 3850 individualized pouches that have not been labeled nor boxed.  
5 All cases consist of 48 pouches. This product also remains at the Debtor's leased  
6 facility. Id.

7 23. It is the Trustee's belief that Medolac has potential value as an operating entity. For  
8 instance, Medolac was awaiting a formal agreement to produce its product for a  
9 large hospital consortium. Unfortunately, such written agreement was provided to  
10 Medolac after the conversion of the case. In addition, Medolac had received an  
11 order of 62 cases which could have resulted in a receivable of \$83,052.17. Due to  
12 the conversion of the case to a Chapter 7, Medolac is not operating. Id.

13 24. The Trustee did consider filing a motion to operate the business, but the Estate had  
14 no funds to continue to be a viable business and it would need the consent along  
15 with additional contribution of funds by Hughes to operate the business. Hughes  
16 was not willing to consent nor lend any additional funds. As such, the Trustee  
17 chose not to proceed with the filing of the motion to operate. Accordingly, the  
18 value of the Estate has significantly decreased and as time continues to go by, it is  
19 likely that the value of the Estate will continue to decrease. Moreover, as a potential  
20 foreclosure was imminent, the Trustee had limited time to find a potential purchaser  
21 for the Estate's assets or even to attempt to market the assets for sale through a  
22 public action. Id.

23 25. As to a public auction, in the Trustee's experience, an auctioneer would likely  
24 charge a 25% commission, and a 10% buyer's premium plus costs. If an auction  
25 were to occur, the first money recovered would have to pay back the secured  
26 creditors which includes Hughes, the Small Business Administration ("**SBA**") and  
27 any finance company of the "leased" equipment. By focusing only on Hughes and  
28 the SBA, the Estate would need to be able to sell the Estate's assets for at least one

1 million dollars to break even (\$250,000 commission, \$600,000 owed to Hughes  
2 and \$150,000 owed to the SBA). Id.

3 26. The Trustee would have a difficult time to proceed with a public auction. The terms  
4 of the DIP Financing Motion, which was approved by this Court, provided in part  
5 that the stay was terminated in favor of Hughes without the need of any additional  
6 court order. Absent the Settlement Agreement, a consensual stay was not agreeable  
7 by Hughes. It is the Trustee's belief that to obtain a stay of any foreclosure, he  
8 would be forced to file an adversary proceeding against Hughes and request that he  
9 be enjoined from proceeding on the foreclosure. If an adversary proceeding was  
10 filed, then the Trustee would be concerned about the likelihood of success and the  
11 cost to maintain such proceeding. As a foreclosure is pending, the timing to secure  
12 and properly market a public auction is extremely limited Id.

13 27. To recover funds for the Estate, the Trustee has alleged that Hughes is not properly  
14 secured in the cash located in the bank accounts, the account receivables, the  
15 avoidance actions, and other potential actions. The Trustee has advised Hughes if  
16 he moves forward through the foreclosure process, he is subject to the equitable  
17 doctrine of marshalling. Finally, if Hughes forecloses on the Estates' assets, the  
18 Trustee has alleged that he could be subject to an avoidance action because there is  
19 a potential that the actual value of the assets of the Estate could be valued  
20 significantly more than the amount owed to Hughes. Id.

21 28. Due to the allegations made by the Trustee, Hughes and the Estate negotiated a  
22 resolution to resolve any and all disputes. An agreement has been reached which  
23 will result in funds being paid to the Estate along with a retention of a variety of  
24 causes of action. A copy of the agreement along with an amendment is attached  
25 hereto collectively as **Exhibit 6** (the "**Settlement Agreement**"). See generally,  
26 Trustee's Declaration in Support.

1 29. The Settlement Agreement resolves all disputes, and the pertinent part of the  
2 Agreement provides as follows:

3 a. Hughes underlying debt will be fully satisfied by the retention of the  
4 Estate's assets. However, the Estate shall retain the following assets:

5 1. Cash held by the Debtor in any account.

6 2. All Debtor's account receivables.

7 3. Any and all claims against Prolacta.

8 4. All Chapter 5 avoidance claims

9 b. After paying applicable costs, the proceeds, if any, received on the  
10 claims against Prolacta, cash held in any account and the account  
11 receivables, shall be divided between Hughes and the Estate. Hughes  
12 shall be entitled to receive 50% of the net proceeds of such assets.

13 c. Hughes shall pay the Estate an additional \$750,000.00 to satisfy the  
14 claims asserted by the Estate.

15 d. Hughes shall not be permitted to foreclose on its remaining Collateral  
16 until the earlier of, entry of this Court's order approving the Settlement  
17 Agreement or 6 days after entry of an order denying the Settlement  
18 Agreement.

19 Id.

20 30. Prior to entering into the Settlement Agreement, the Trustee examined factors  
21 including the probability of success in any claims against Hughes, the difficulties  
22 in the matter of collection, the cost and complexity of litigation and the best interest  
23 of creditors. Each of the factors played a part in the Trustee's decision to enter into  
24 the Settlement Agreement. Id.

25 31. The Trustee was concerned about the viability of the allegation he has made against  
26 Hughes. The Bankruptcy Court would be forced to interpret its own order and the  
27 agreement made between the Chapter 11 Debtor and Hughes. The Court would  
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- 1        need to determine what is the collateral securing Hughes' loan. It is not entirely  
2        certain that the Court would rule in favor of the Trustee as to his allegations. Id.
- 3        32. The Trustee is more confident on his marshalling allegation and fraudulent transfer  
4        allegation, but such allegations are only viable if the elements of such causes of  
5        action are met and that the value of the assets are significantly more than the amount  
6        of the debt. Considering the ability to foreclose, the dwindling value of the assets,  
7        the continuing liability of the Bankruptcy Estate for storing these assets at the leased  
8        facility, and that no interested party has made an offer to purchase such assets, the  
9        Trustee believes that such allegations are legitimate, but the success is not  
10       guaranteed. Id.
- 11       33. The Trustee is concerned about the collectability of Hughes. Although he does  
12       believe that Hughes may be collectable, it is unknown what he personally owns or  
13       whether his assets are protected through limited liability companies or other sources  
14       of asset protection. Id.
- 15       34. The cost and complexity of this matter should not be understated. The Bankruptcy  
16       Estate has no funds to litigate this case. The cost of prosecution will necessitate a  
17       litigation attorney willing to take such matter contingent upon collection. Any  
18       litigation is complex and potential litigation involving interpretation of court  
19       orders, commercial law, fraudulent transfer law and bankruptcy law. The case will  
20       be extremely complex. Id.
- 21       35. The amount obtained by the Estate by virtue of the Settlement Agreement is in the  
22       best interest of creditors. Based upon the amount of the debt in the schedules and  
23       the applicable proof of claims which have been reviewed by the Trustee, it appears  
24       that there will be funds available to pay priority unsecured creditors and potentially  
25       unsecured creditors. The Trustee will also be able to utilize the funds to investigate  
26       other potential actions. Id.
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36. Based upon the Trustee's business judgment and the examination of applicable factors, the Trustee believes that Settlement Agreement is in the best interest of the Bankruptcy Estate. Id.

## **LEGAL ARGUMENT**

### **JURISDICTION, VENUE; CORE PROCEEDING**

37. This Court has jurisdiction over Medolac's Chapter 7 bankruptcy case. 28 U.S.C. §§ 1334(a) and 157(a), and LR 1001(b)(1).

38. Venue of Medolac's Chapter 7 bankruptcy case is proper in the District of Nevada under 28 U.S.C. §1408 and 1409.

39. Under 28 U.S.C. §§ 1334 and 157(b)(2)(H), (K) and (O), bankruptcy courts have core subject-matter jurisdiction as to proceedings to determine, avoid or recover fraudulent conveyances, determination of the validity, extent or priority of liens and other proceedings affecting the liquidation of the assets of the estate.

40. The statutory predicate for the relief sought is Sections 105(a), 363(b) and Rule 9019.

### **CONTROLLING LAW**

41. The Trustee is requesting this Court to approve the Settlement as stated within the Settlement Agreement pursuant to Section 105(a) and Rule 9019(a). Rule 9019(a) provides:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.

42. "The purpose of a compromise agreement is to allow the trustee and the creditors to avoid the expenses and burdens associated with litigating sharply contested and

dubious claims." *In re A & C Properties*, 784 F.2d 1377, 1380-81 (9th Cir. 1986).  
The bankruptcy court has great latitude in approving compromise agreements. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988). However, the court's discretion is not unlimited. The court may approve a compromise only if it is "fair and equitable." *A & C Properties* at 1381. In approving a proposed compromise in bankruptcy proceedings, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *Id.* at 1381 (citations omitted). "It is not necessary to satisfy each of these factors provided that the factors as a whole favor approving the settlement." *In re Pacific Gas & Elec. Co.*, 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004). Ultimately, the Court must determine if the settlement is reasonable given the particular circumstances of the case. *A & C Properties*, 784 F.2d at 1381. The Court's role in considering a proposed compromise is "to canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness." *Id.* at 417 citing *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 493, 496-97 (Bankr. S.D.N.Y. 1991). Although the Trustee bears the burden of persuasion, "a court generally gives deference to a trustee's business judgment in deciding whether to settle a matter." *In re Mickey Thompson Entm't Group, Inc.*, 292 B.R. 415, 420 (9th Cir. BAP 2003). See also, *In re Hyloft*, 451 B.R. 104 (Bankr D. Nev. 2011) [Court finding that the settlement was not fair and equitable under the A & C

1 Factors] and *In re Endoscopy Ctr. of Southern Nevada*, 451 B.R. 527 (Bankr. D.  
2 Nev 2011) [Trustee met his burden demonstrating that the settlement was in the  
3 best interest of the estate].

4 43. Applying the A&C Properties factors, the Trustee submits the proposed Settlement  
5 Agreement is fair and equitable, within the Trustee's reasonable business judgment,  
6 and in the best interest of the Debtor's estate for the following reasons.  
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8 **Probability of Success**  
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10 44. The Trustee is confident that he has claims against Hughes. However, the Trustee  
11 acknowledges that there is always some level of uncertainty and risk in litigation.  
12 Although no adversary case has been filed against Hughes, the Trustee has  
13 examined potential defenses as to his claims and is forced to acknowledge that it is  
14 an uphill battle to prevail against Hughes. In particular, the Trustee is aware of the  
15 Court order approving the financing agreement with Medolac, that equitable  
16 considerations could favor Hughes not the Estate, and that there is an issue as to the  
17 determination of the value of the Estate's assets. For instance, for the Estate to  
18 prevail on valuation, it must be a high valuation. Considering that Debtor is not  
19 operating, some of the equipment is leased, and Liquid Gold, Prolacta nor no other  
20 party made an offer to purchase such assets, the Trustee may have a difficult time  
21 in asserting a marshalling action and/or fraudulent transfer action. Reviewing these  
22 potential defenses available to Hughes, the Trustee has determined that reasonable  
23 defenses exist with respect to the underlying theories of recovery.  
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**Difficulties in the Matter of Collection**

45. The Settlement Agreement provides terms of resolution of all disputes as between the Estate and Hughes. The Settlement Agreement allows for certainty in both means of payment and collection from Hughes. While the Trustee, upon information and belief, expects that Hughes could have the financial wherewithal to satisfy a judgment, that does not necessarily mean that Hughes would either willingly or promptly do so such that the Trustee's further resort to remedies under either the Bankruptcy Code or otherwise applicable law can be categorically dismissed out of hand. Accordingly, the payment and collection issues only slightly favors settlement or is, at worst, a neutral factor in the Trustee's analysis of the approval of the Settlement Agreement.

**Cost and Complexity of Litigation**

46. If the Bankruptcy Estate files an Adversary Proceeding against Hughes, the complexity, inconvenience, delay, and expense can be expected to increase substantially; especially if the Adversary Case were to proceed to a trial on the merits. The allegations against Hughes arise from the DIP Financing Agreement, the equitable doctrine of marshalling and fraudulent transfer law. These claims involve fact intensive questions, as well as complicated questions of law, the resolution of which could potentially require costly legal research and briefing, evaluation, development, the collection of vast amounts of documentary evidence in preparation for trial, and potentially lengthy direct and cross-examinations of witnesses (and related preparation) with no certainty of achieving an outcome that is at least as favorable to the Bankruptcy Estate as

1 that set forth in the Settlement Agreement. Further, even a successful outcome  
2 through litigation through trial on the merits could likely result in an appeal by  
3 the losing party of one or more of the legal and factual issues that would  
4 likely be contested were an adversary case be litigated through a trial on the merits.  
5  
6 47. Thus, the complexity, inconvenience, delay, uncertainty, and expense of litigating  
7 the Adversary Case through a trial on the merits militates heavily in favor of  
8 resolving this dispute through the Settlement Agreement.

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10 **Interests of Creditors.**

11 48. The Settlement Agreement provides for a full and final resolution of the claims  
12 against Hughes. The Trustee believes that the Settlement Agreement and  
13 corresponding terms thereunder best serve the interests of all creditors because  
14 it secures additional funds in the form of the Settlement Funds for the  
15 Bankruptcy Estate and removes Hughes' claim against the Bankruptcy Estate. The  
16 Settlement Agreement thereby increases the prospects of payment of estate  
17 dividends to holders of allowed prepetition general unsecured claims against the  
18 Bankruptcy Estate and reduces the risk of delayed and expensive litigation of the  
19 filing and prosecution of an adversary case. The Settlement Agreement also  
20 resolves the allegations in an efficient manner, thereby minimizing further  
21 litigation, bankruptcy costs and attorneys' fees.

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24 **Sale Aspects of Approval of Settlement.**

25 49. Where a settlement of a dispute involves the sale of legal claims to one of the  
26 settling parties, such as in the case at hand, the court should apply the requirements  
27 of section 363 of the Bankruptcy Code to the sale. See *Adeli v. Barclay (In re*  
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1 *Berkeley Del. Court, LLC*), 834 F.3d 1036, 1039-1040 (9th Cir. 2016) (citing  
 2 *Goodwin v. Mickey Thompson Entm't Grp., Inc. (In re Mickey Thompson Entm't*  
 3 *Grp., Inc.)*, 292 B.R. 415, 422 (B.A.P. 9th Cir. 2003)); see also *Fitzgerald v. Ninn*  
 4 *Worx Sr, Inc. (In re Fitzgerald)*, 428 B.R. 872, 884 (B.A.P. 9th Cir. 2010) (noting  
 5 that “[t]he sale at issue here was both a sale under section 363 and a compromise  
 6 under Rule 9019.”). In *Mickey Thomson*, the BAP explained that “the disposition  
 7 by way of ‘compromise’ of a claim that is an asset of the estate is the equivalent of  
 8 a sale of the intangible property represented by the claim” and thus that “a  
 9 bankruptcy court is obliged to consider . . . whether any property of the estate that  
 10 would be disposed of in connection with the settlement might draw a higher price  
 11 through a competitive process and be the proper subject of a section 363 sale.” 292  
 12 B.R. at 421-22.

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 15 50. Section 363(b)(1) of the Bankruptcy Code provides that a trustee, after notice and  
 16 a hearing, may use, sell, or lease, other than in the ordinary course of business,  
 17 property of the estate. This provision generally allows a trustee (subject to Court  
 18 approval) to sell property of the estate outside the ordinary course of business where  
 19 the proposed sale is a sound exercise of the trustee’s business judgment and the sale  
 20 is proposed in good faith and for fair value. See *Walter v. Sunwest Bank (In re*  
 21 *Walter)*, 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988) (quoting *Institutional Creditors*  
 22 *of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re Continental Air*  
 23 *Lines, Inc.)*, 780 F.2d 1223, 1226 (6th Cir. 1986), and in turn citing *Committee of*  
 24 *Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1069-  
 25 71 (2d Cir. 1983)).  
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1 51. “The court’s obligation in § 363(b) sales is to assure that optimal value is realized  
2 by the estate under the circumstances.” *Simantob v. Claims Prosecutor, LLC (In*  
3 *re Lahijani)*, 325 B.R. 282, 288-89 (B.A.P. 9th Cir. 2005). The following  
4 additional factors are instructive in evaluating a proposed sale: “(i) whether  
5 adequate and reasonable notice has been provided to parties in interest, including  
6 full disclosure of the sale terms and the debtor’s relationship with the purchaser,  
7 (ii) whether the sale price is fair and reasonable, and (iii) whether the proposed  
8 buyer is proceeding in good faith.” *Family Christian, LLC*, 533 B.R. at 626; *In re*  
9 *Exaeris Inc.*, 380 B.R. 741, 744 (Bankr. D. Del. 2008).

11 52. Although nothing in the Bankruptcy Code prohibits a sale to insiders, “insider sales  
12 are subject to ‘heightened scrutiny to the fairness of the value provided by the sale  
13 and the good faith of the parties in executing the transaction.’” *In re Roussos*, 541  
14 B.R. 721, 730 (Bankr. C.D. Cal. 2015) (quoting *In re Family Christian, LLC*, 533  
15 B.R. 600, 622 (Bankr. W.D. Mich. 2015)). This is because insiders “usually have  
16 greater opportunities for . . . inequitable conduct.” *Fabricators, Inc. v. Technical*  
17 *Fabricators, Inc. (Matter of Fabricators, Inc.)*, 926 F.2d 1458, 1465 (5th Cir.  
18 1991); see also *Bayer Corp. v. MascoTech, Inc. (In re Autostyle Plastics, Inc.)*, 269  
19 F.3d 726, 745 (6th Cir. 2001); *In re Tidal Const. Co., Inc.*, 446 B.R. 620, 624  
20 (Bankr. S.D. Ga. 2009) (“[E]ven when parties are completely forthright with the  
21 facts surrounding the transfer, § 363 sales to insiders are subject to a higher scrutiny  
22 because of the opportunity for abuse.”); *Rickel & Associates v. Smith (In re Rickel*  
23 *& Assocs., Inc.)*, 272 B.R. 74, 100 (Bankr. S.D.N.Y. 2002) (same); *In re W.A.*  
24 *Mallory Co., Inc.*, 214 B.R. 834, 837 (Bankr. E.D. Va. 1997) (same). As applied  
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1 in the case at hand, Hughes, a party to the proposed Settlement Agreement is not  
2 only the DIP lender but also an equity security holders in the Debtor, and thus an  
3 insiders. As a result, the Court must strictly scrutinize this proposed sale  
4 transaction.

5 53. In this instance, parties have been given reasonable notice of this motion and  
6 opportunity to object and/or present the Trustee a better offer. Further, all parties  
7 are aware that Hughes is not only the DIP lender to the Debtor but was also an  
8 equity holder of the Debtor.

9 54. Given the fact that Debtor is not operating, the value of its assets is deteriorating  
10 daily with the Bankruptcy Estate's administrative expenses continue to increase,  
11 the amounts to be paid by Hughes for the Bankruptcy Estate's consent to Hughes'  
12 strict foreclosure in satisfaction of the DIP loan facility is more than fair and  
13 reasonable.

14 55. Proposal of the Settlement Agreement between Hughes and the Trustee is made in  
15 good faith.

16 56. If a valid business justification exists for the resolution contemplated by the  
17 Settlement Agreement – as it does in this Chapter 7 Case – a trustee's decision to  
18 enter into such an agreement and seek approval of the same enjoys a strong  
19 presumption that in making a business decision the trustee acted on an informed  
20 basis, in good faith and in an honest belief that the action taken was in the best  
21 interests of the estate. *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y.  
22 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Therefore,  
23 any party objecting to the proposed resolution must make a showing of bad faith,  
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1 self-interest or gross negligence. *In re Integrated Res., Inc.*, 147 B.R. at 656 (citing  
2 *Smith v. Van Gorkom*, 488 A.2d 858, 872-73 (Del. 1985)); see also *Comm. of*  
3 *Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*,  
4 60 B.R. 612, 616 (Bankr. S.D. N.Y. 1986) (Where the trustee articulates a  
5 reasonable basis for its business decisions (as distinct from a decision made  
6 arbitrarily or capriciously), courts will generally not entertain objections to the  
7 trustee's conduct.).  
8

9 **Cause Exists To Eliminate Any Stay Imposed By The Bankruptcy Rules.**

10 57. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease  
11 of property ... is stayed until the expiration of 14 days after entry of the order, unless  
12 the court orders otherwise.” Fed. R. Bankr. P. 6004(h).  
13

14 58. The Trustee requests that any order approving this Motion be effective  
15 immediately, thereby waiving the 14-day stays imposed by Bankruptcy Rules 6004.  
16 This waiver or elimination of the 14-day stay is necessary to complete the strict  
17 foreclosure and the funds to be received by the Bankruptcy Estate as expeditiously  
18 as possible. The Trustee respectfully submits that it is in the best interest of the  
19 Estates to consummate the Settlement Agreement as soon as possible. Accordingly,  
20 the Trustee requests that the Court eliminate the 14-day stay imposed by  
21 Bankruptcy Rule 6004.  
22  
23  
24  
25  
26  
27  
28

**CONCLUSION**

59. Simply put, the Settlement Agreement is fair and equitable. The settlement rests well above the lowest point in the range of reasonable potential litigation and settlement outcomes within the meaning of the Ninth Circuit's governing decision in A & C Properties. For the reasons set forth herein, the Trustee submits that under the circumstances of this case, the Settlement Agreement is fair and reasonable and should be approved with a waiver of any stay imposed by the Bankruptcy Rules.

DATED: 7-18-21

/s/ Brian D. Shapiro

**BRIAN D. SHAPIRO, ESQ.**

**Law Office of Brian D. Shapiro**

510 S. 8<sup>th</sup> Street

Las Vegas, NV 89101

(702) 386-8600 Fax (702) 383-0994

[brian@brianshapirolaw.com](mailto:brian@brianshapirolaw.com)

Proposed Attorney for Trustee

# EXHIBIT 1



Donald H. Cram  
Attorney  
Direct Line: (415) 677-5536  
dhc@severson.com

One Embarcadero Center, Suite 2600  
San Francisco, CA 94111  
Telephone: (415) 398-3344  
Facsimile: (415) 956-0439

July 6, 2021

**Via E-Mail and FedEx**

Medolac Laboratories  
Attn: Elena Medo  
1031 Boulder City Parkway  
Boulder City, Nevada 96005  
E-mail: emedo@medolac.com

Matthew C. Zirzow  
Larson & Zirzow, LLC  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101  
E-mail: mzirzow@lzlawnv.com

Re: *In re Medolac Laboratories, A Public Benefit Corporation*  
Case No.21-11271-abl  
**Notice of Default – Debtor in Possession Loan and Security Agreement**

Dear Ms. Medo and Mr. Zirzow:

As you know, my firm represents Doug Hughes, the lender under that Debtor in Possession Loan and Security Agreement dated March 18, 2021 (“DIP Loan Facility”). The purpose of this letter is to provide you notice of the following occurrences that constitute events of default by the borrower, Medolac Laboratories (“Borrower”) under section 8 of the DIP Loan Facility:

1. Borrower’s inability to proceed as a debtor under Subchapter V of Chapter 11 of the Bankruptcy Code;
2. The milestone requirement having not been met, namely Borrower’s failure to confirm a Plan within 100 days after the petition date; and
3. Conversion of the Chapter 11 Case to a Chapter 7 under the Bankruptcy Code.

Please also take notice, that lender intends to exercise his remedies under section 9.2 of the DIP Loan Facility. Lender reserves the right to pursue other remedies that he is entitled to under the terms of the DIP Loan Facility.



Medolac Laboratories  
July 6, 2021  
Page 2

Please feel free to contact me should you have any questions or should you wish to discuss this matter in greater detail.

Very truly yours,

/s/Donald H. Cram

Donald H. Cram

DHC:dhc

cc: Brian Shapiro, Subchapter V Trustee (via email)  
Terri H. Didion, Assistant United States Trustee (via email)

## EXHIBIT 2



Donald H. Cram  
Attorney  
Direct Line: (415) 677-5536  
dhc@severson.com

One Embarcadero Center, Suite 2600  
San Francisco, CA 94111  
Telephone: (415) 398-3344  
Facsimile: (415) 956-0439

July 14, 2021

**Via FedEx and U.S. Mail**

Medolac Laboratories, A Public Benefit  
Corporation  
Attn: Elena Medo  
1031 Boulder City Parkway  
Boulder City, Nevada 89005

Matthew C. Zirzow  
Larson & Zirzow, LLC  
850 E. Bonneville Ave.  
Las Vegas, Nevada 89101

Brian Shapiro  
Chapter 7 Trustee  
510 S. 8th Street  
Las Vegas, NV 89101

Crestmark Vendor Finance, A Division of  
Metbank  
5480 Corporate Drive, Suite 350  
Troy, MI 48098

Stearns Bank N.A.  
500 13<sup>th</sup> Street  
Albany, MN 56307

Targeted Lease Capital LLC  
5500 Main Street, Suite 300  
Williamsville, NY 14221

Thermo Fisher Financial Services, Inc.  
168 Third Ave.  
Waltham, MA 02451

M2 Lease Funds LLC  
175 N. Patrick Blvd., Ste. 140  
Brookfield, WI 53045

Navitas Credit Corp.  
201 Executive Center Drive, Suite 100  
Columbia, SC 29210

United States Small Business Administration  
10737 Gateway West, 300  
El Paso, TX 79935

**Re: NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL IN FULL  
SATISFACTION OF SECURED OBLIGATION**

Debtor: Medolac Laboratories, A Public Benefit Corporation  
Secured Party: Doug Hughes  
Collateral: All Assets of the Debtor

Dear Madam/Sir:

The Debtor, Medolac Laboratories, A Public Benefit Corporation ("Debtor"), is in default under a Debtor in Possession Loan and Security Agreement dated March 18, 2021, entered into between the Debtor and the Secured Party, Doug Hughes ("Secured Party"), and approved by the



Medolac Laboratories  
July 14, 2021  
Page 2

United States Bankruptcy Court for the District of Nevada in the bankruptcy case of *In re Medolac Laboratories, A Public Benefit Corporation*, Case No. 21-11271-abl, by Final Order entered April 26, 2021 [*Docket No. 90*], granting a first priority security interest in the Collateral consisting of All Assets of the Debtor (the "Collateral"). The Collateral does not include equipment leased by the Debtor. The outstanding balance due from the Debtor to the Secured Party as of July 13, 2021, is \$599,336.14 (the "Balance").

The Secured Party shall accept the Collateral in full satisfaction of the debt due from the Debtor.

If you have any objection to Secured Party's proposal to accept the Collateral in full satisfaction of the Balance, we must receive your signed written statement of your objection within twenty (20) days from the date of this notice. If we have not received a signed, written objection within that time period, you will be deemed to have consented to this proposal and will have no further right to object, and the Secured Party will retain the Collateral in full satisfaction of the Balance, as described in this notice.

Very truly yours,

/s/Donald H. Cram

Donald H. Cram

DHC:dhc

cc: Terri H. Didion, Assistant United States Trustee (via email)

# EXHIBIT 3

## Trustee Brian Shapiro

---

**From:** Trustee Brian Shapiro  
**Sent:** Saturday, July 3, 2021 10:04 AM  
**To:** mguymon@goldguylaw.com  
**Cc:** Brian D. Shapiro, Trustee  
**Subject:** Medolac

Ms. Guymon:

Considering the ruling last night on converting the case, I wanted to let you know that I have advised the UST after the hearing of such outcome. I am unaware if I will be appointed as the Chapter 7 Trustee. However, if I am, it appears that the first order of business is attempting to do an immediate 363 sale of all assets, excluding avoidance actions and cash.

As you are aware, the DIP Lender can immediately take control of the collateral, foreclose on its collateral and doing so without the necessity of obtaining any further order of the Court. Based upon my quick calculations, the amount owed on the \$500,000 note at a 20% interest rate (this is the default rate) is approximately \$576,027.40. It would seem to me that considering the amount of the debt and the necessity to bring funds into the Estate, an offer should be more than \$1 million. Quite frankly, I would want an offer that permits the Court to give us his immediate attention to push the sale through.

If a sale agreement is reached, then it appears to me that a Trustee will need to immediately take control of the assets (competing against the Lender), file an emergency motion to reinstate the stay and contemporaneously file a 363 motion. In my opinion, due to your Clients' litigation, the hard assets could be sold free and clear, but the Fortifier formula and other "intellectual property" would have to be sold without warranty nor free and clear of such claims. Of course, if your Client is the purchaser, then it is a non-issue.

To the extent that your Client has any interest, then I would strongly recommend that they act fast to complete such sale. Another consideration your Client may want to consider is having the Trustee waive the pre-petition attorney client privilege.

If there is any interest, then let me know. Here is my cell number (which you likely already know) 702-460-1512.

~ B

Brian D. Shapiro  
Bankruptcy Trustee  
510 S. 8<sup>th</sup> Street  
Las Vegas, NV 89101  
(t) 702-386-8600; (f) 702-383-0994

This e-mail message is a confidential communication from the Bankruptcy Trustee Office of Brian D. Shapiro and is intended only for the named recipient(s) above and may contain information that is a trade secret, proprietary, privileged or attorney work product. If you have received this message in error, or are not the named or intended recipient(s), please immediately notify the sender at [702.386.8600](tel:702.386.8600) and delete this e-mail message and any attachments from your workstation or network mail system.

## Trustee Brian Shapiro

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**From:** Marjorie Guymon <mguymon@goldguylaw.com>  
**Sent:** Wednesday, July 7, 2021 6:53 PM  
**To:** Trustee Brian Shapiro  
**Cc:** Chris Kroes  
**Subject:** Re: Medolac

Before we could do so we would need to know what the assets are. Will you be doing an inventory?

Marjorie A. Guymon, Esq.  
GOLDSMITH & GUYMON, P.C.  
2055 Village Center Circle  
Las Vegas, Nevada 89134  
(702)873-9500  
goldguylaw.com  
goldguytrusts.com

On Jul 7, 2021, at 6:27 PM, Trustee Brian Shapiro <brian@trusteeshapiro.com> wrote:

Marjorie. I was just advised that I am being appointed as the chapter 7 trustee. Accordingly if there is any interest in purchasing the assets then let me know.

Brian

Brian Shapiro  
510 S. 8th Street  
Las Vegas, NV 89101  
(p) 702-386-8600  
e-mail: Brian@TrusteeShapiro.com  
Brian@BrianShapiroLaw.com

## Trustee Brian Shapiro

---

**From:** Marjorie Guymon <mguymon@goldguylaw.com>  
**Sent:** Tuesday, July 13, 2021 2:14 PM  
**To:** Trustee Brian Shapiro; Livermon, Charlie  
**Cc:** Didion, Terri (USTP); Matt Zirzow; Strozza, Nick (USTP); Chris Kroes; Donald H. Cram  
**Subject:** RE: Medolac  
**Attachments:** medolac message to customers.jpg

Brian,

At this time Prolacta is not interested in purchasing the assets or funding continued operations in order to sell product. It appears that the debtor is thwarting your efforts to sell product in any event. See attached notice sent to Medolac customers.

Sincerely,

*Marjorie A. Guymon*

Marjorie A. Guymon, Esq.  
Goldsmith & Guymon, P.C.  
[mguymon@goldguylaw.com](mailto:mguymon@goldguylaw.com)  
2055 Village Center Circle  
Las Vegas, NV 89134  
Phone: (702) 873-9500  
Fax: (702) 873-9600

Please visit our websites at:

[www.goldguylaw.com](http://www.goldguylaw.com)  
[www.goldguytrusts.com](http://www.goldguytrusts.com)

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---

**From:** Trustee Brian Shapiro <brian@trusteeshapiro.com>  
**Sent:** Tuesday, July 13, 2021 8:03 AM  
**To:** Livermon, Charlie <Charlie.Livermon@wbd-us.com>; Marjorie Guymon <mguymon@goldguylaw.com>  
**Cc:** Trustee Brian Shapiro <brian@trusteeshapiro.com>; Didion, Terri (USTP) <Terri.Didion@usdoj.gov>; Matt Zirzow <MZirzow@lzlawnv.com>; Strozza, Nick (USTP) <Nick.Strozza@usdoj.gov>  
**Subject:** Medolac

Dear Charlie and Marjorie:

Please note that a dispute has arisen between the Estate and the DIP Lender, and it is unlikely that I will be filing the motion to operate. As such, I am once again inquiring if your respective Clients have any interest in purchasing the assets of the estate? Such assets include all items listed in the bankruptcy schedules (excluding any cash and causes of actions). Time is of the essence to reach an agreement and to file such applicable motions because the DIP Lender has already submitted a notice of default and can proceed with its remedies.

Feel free to reach out to me if your respective Clients and/or any third party they know may be interested in such assets. If I do not hear back from you, then I will presume that they have no interest.

~ Brian

Brian D. Shapiro  
Bankruptcy Trustee  
510 S. 8<sup>th</sup> Street  
Las Vegas, NV 89101  
(t) 702-386-8600; (f) 702-383-0994

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## Trustee Brian Shapiro

---

**From:** Trustee Brian Shapiro  
**Sent:** Friday, July 16, 2021 5:03 PM  
**To:** Marjorie Guymon; Trustee Brian Shapiro  
**Cc:** Chris Kroes; Didion, Terri (USTP); Gulden, Cameron (USTP)  
**Subject:** RE: Medolac  
**Attachments:** RE: Medolac; Property Schedules - flagged.xlsx

Marjorie:

If you may recall, just this past Tuesday, you advised me that Prolacta was not interested in purchasing such assets. A copy of your prior email is attached for your convenience. Accordingly, you left me under the impression that you did not want any additional follow up as to the items and inventory.

Considering your recent email that there is now a renewed interest, attached is a list of the inventory and the following is my best response as to the remaining questions:

Question: What amount of milk is on hand? Of the milk, how much is raw and how much is in the benefit product form?

Answer: There is a significant amount of raw milk on the premises. Based upon the agreement with the co-op it is my understanding that the remaining raw milk on the premises is owned by the co-op not the Debtor. As to product, there are approximately 177 cases in product form and about 3800 cases that have not been labeled. All product is Benefit 18, 20 or 24.

Question: What is the amount of cash on hand?

Answer: The Bankruptcy Estate is in possession of \$184,770.79

Question: What is the current a/r?

Answer: There is \$137,737.20 in account receivables. Due to the conversion to a Chapter 7 and my past experiences on collecting receivables post-conversion, I would not be surprised if the collectability is less than 50%. However, it is my understanding that such accounts are for hospitals and other medical centers. As such, my estimation could be off.

Question: Are you selling trademarks, names or customer lists? Are you selling SOPs, formulas [sic formulas] and/or research information?

Answer: As of this date, the Bankruptcy Estate has not entered into any agreement to sell any of the assets. To the extent that the Bankruptcy Estate were to sell assets, it would likely include any and all assets of the Bankruptcy Estate except for cash, avoidance actions and any other actions.

Thank you for your inquiry. If there is any interest in purchasing such assets, then I urge you to act promptly because time is of the essence.

` B

Brian D. Shapiro  
Bankruptcy Trustee  
510 S. 8<sup>th</sup> Street  
Las Vegas, NV 89101  
(t) 702-386-8600; (f) 702-383-0994

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---

**From:** Marjorie Guymon <mguymon@goldguylaw.com>  
**Sent:** Friday, July 16, 2021 3:58 PM  
**To:** Trustee Brian Shapiro <brian@trusteeshapiro.com>  
**Cc:** Chris Kroes <chris@mccarthykroes.com>  
**Subject:** Medolac

Brian,

As a potential buyer of assets, and a possible objector to the pending 9019 motion, Prolacta would like a current inventory to know what is being sold. I had previously asked you for an inventory and you advised me that you would be going to the premises last week to check out the assets and would get back to me.

What amount of milk is on hand?  
Of the milk, how much is raw and how much is in the benefit product form?  
What is the amount of cash on hand?  
What is the current a/r?  
Are you selling trademarks, names or customer lists?  
Are you selling SOPs, formulas and/or research information?

Sincerely,

*Marjorie A. Guymon*

Marjorie A. Guymon, Esq.  
Goldsmith & Guymon, P.C.  
[mguymon@goldguylaw.com](mailto:mguymon@goldguylaw.com)  
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## EXHIBIT 4

Lessor	Description of Equipment	Purchase Option Price	Amount Owed
Brickhouse Capital, LLC Crestmark Equipment Finance	1 Retort	\$1.00	
Brickhouse Capital, LLC Targeted Lease Capital	1 Spectramax Microplate Reader with Injectors 1 Spectramax ID5 Injector 1 Power Cord 1 Spectramax ID5 Scan Later Set 1 Centrifuge	Purchase Finance	Approx. \$48,957.30
Domino Amjet, Inc.	1 Ax Driven Airdryer 1 AX SERIES ITM TYPE 2 1 Pulse RS 6M, 60u, Printhead & Conduit 1 Ax Starter Pack 1 Status Pack 1 Comms Pack 1 Professional Printing Pack 1 Remote Touchscreen 10 inch 1 CABLE 0.7M REMOTE TOUCHSCREEN 10 INCH 1 SUPPORT UI ASSY 1 FLOOR MOUNTING KIT 1 NA 29IN AX PRINTER STAND - AX350 OR AX550 1 BEACON ASSEMBLY TYPE 2 1 PHOTOELECTRIC COMMUNICATION SENSOR WITH LUMBERG CONNECTOR 1 ENCODER KIT D+ BCP7 1 Ax550i RS Printer 1 3BK102 - Ink Printer 2 SPECIALIST 3BK102S THERMOCHROMIC BLACK-TO-RED INK VEGETABLE Oil RESISTANT 1 MAKE-UP FOR 3BK102S- CASE OF 4 CARTRIDGES 2 WASH, WI-300 1 LT EA 1 AX-SERIES SAFEGUARD 100 3 YEAR INVOICED IN ADVANCE	None	
M2 Lease Funds	1 6' Thermo Hamilton Concept Fume Hood 1 Microfluidics M-700 Homogenizer Microfluidizer 8 Skidding	Purchase Finance	

	1 CBIN - 30 x 36 x 32 1 Enerquip Heat Exchanger 1 Fisher Scientific Isotemp Programmable Furnace 5 VWR Single Channel Pipettes 1 Filtrine Recirculating Loop Chiller 1 Vacuum Oven 1 Laboratory Workstation on Wheels, 6 Foot		
Brickhouse Capital, LLC  Navitas Credit Corp.	1 Copeland IOHP Compressor, 120K.@+45/130 460/3 1 COPELAND SALVAGE DISCUS COMPRESSOR (CORE) 1 COPE DISCUS COMP ISHP 63K@-25/10S 208/230/460 1 COPELAND SALVAGE DISCUS COMPRESSOR (CORE) 2 IRP DP CONT ACTOR 3P 60AMP 120V AC COIL 2 A V9000 RECORDER CONTROLLER 4 PEN 1 RTD SANITARY 1 RID SANITARY 1 RID SANITARY 1 RTD SANITARY 1 RID SANITARY 1 RID SANITARY 2 MOUNTING BRACKET FOR A V-9000 AND AJ-300 6 CT1407SF0311A2 WIRING HEAD CT 1 KIT TOOL STD M700 1 SPAREPARTSM7.125-30 1 TOOL SEAL REMOVAL ASSY M700 30K 1 PLUNGER 30K 1.000/.999 OD 17-4 PH	Purchase Finance	
Boulder Investo, LLC (Landlord)	1031 and 1027 Nevada Highway, Boulder City, NV.	None	Monthly rent of \$18,800.00
Stearns Bank Lease	1 HP sp2-12H Automatic Filling and Capping	Purchase Agreement	\$88,966.77 through 7/23/21
ThermoFisher Scientific	1 QS5 (A28139)	\$1.00 Buyout	
ThermoFisher Scientific	ShopAmp Tube Stirip, Gelow Power, Nanodrop, Spectromoter, MagMax (difficult to read)	\$1.00 Buyout	

## EXHIBIT 5

#	Date Acq	Description	Cost	Salvage Value	Depr Basis	Location	Flag	Description
For Liquidation Calculation								
3	7/1/2013	FREEZER	484.92	0	484.92	Lab	Blue	chest freezer
4	10/1/2013	TRAILER	1000	250	750	Parking Lot	Blue	Trailer in parking lot
5	2/4/2014	CALAIS HUMAN MILK ANALYZER	59500	10000	49500	Lab	Blue	
6	2/11/2014	BLACK FREEZER BINS	710.21	50	660.21	Warehouse	Blue	Storage for Milk
7	2/25/2014	VACUUM SEALER	2165	300	1865	Small Cleanroom	Blue	One Uline Sealer
8	3/1/2014	STAINLESS STEEL TANK SYSTEM	39090	7174.12	31915.88	Warehouse (main)	Blue	CIP tank system
9	3/1/2014	MOVEABLE CLEAN ROOM	85845.9	10000	75845.9	Warehouse (Main)	Blue	Free Standing and Walls for Elena's new office
10	3/1/2014	CIPSYSTEM	46645.43	8000	38645.43	Warehouse (Main)	Blue	
11	3/1/2014	VAT FOR THAWING	12158.43	0	12158.43	Warehouse (Main)	blue	2 original hot and cold vat
12	3/1/2014	CHILLER	19394.32	4000	15394.32	Warehouse (Main)	Blue	One of two original chillers
14	3/1/2014	SAFETY EYE WASH STATION	1175.24	0	1175.24	Warehouse (Main)	Blue	
15	3/1/2014	WATER HEATER FOR CIP SYSTEM	8969.67	500	8469.67	Warehouse (Main)	Blue	
16	3/1/2014	PUMP FOR VAT	2409.75	300	2109.75	Warehouse (Main)	blue	Stainless Pump
17	3/1/2014	PUMP FOR CLEAN ROOM	1325	200	1125	Warehouse (Main)	blue	Stainless Pump
19	3/8/2014	WIRE KENNEL FOR CHEMICAL STORAGE	359	30	329	Outback	blue	fencing around boilers
20	3/12/2014	STORAGE BINS	1078.8	50	1028.8	Warehouse (Main)	blue	Storage Bins
22	4/9/2014	LUMINATOR & DOCKING STATIONS	2353.76	300	2053.76	Lab	Blue	Camera and UV illuminator for lab work
23	4/9/2014	WASHER & DRYER	1149.95	300	849.95	Warehouse (Main)	Blue	Stacked Laundry System
25	5/7/2014	STAINLESS STEEL CART	1215.31	300	915.31	Warehouse (Main)	Blue	Rolling Cart
27	5/19/2014	FREEZER TRAYS	378.4	50	328.4	Warehouse (Main)	Blue	Some of the Trays
28	6/4/2014	64 STORAGE BINS	575.36	75	500.36	Warehouse (Main)	Blue	Storage Bins for Milk
29	6/4/2014	SHELVING	179.98	25	154.98	Warehouse (Main)	Blue	Basic Shelves (garage style)
30	6/4/2014	3WIRE RACKS	476.97	75	401.97	Warehouse (Main)	Blue	Freezing Racks
31	6/6/2014	3 DOOR FREEZER	4380	500	3880	R&D	Blue	3 door upright
32	6/12/2014	ANDRITZ FRAUTCH COLD MILK...	26682	4000	22682	Large Cleanroom	Blue	Separator (large)
33	6/24/2014	SC-450 AUTO SCRUBBER	4151.79	800	3351.79	Back Hallway	Blue	Walk Behind Scrubber
34	7/10/2014	STORAGE RACKS	855	200	655	Freezer	Blue	Freezing Racks
35	7/16/2014	CLEAN ROOM ADDITIONS (MOVABLE...)	1081.89	100	981.89	Warehouse (main)	Blue	
36	7/21/2014	COMMERCIAL BUG ZAPPER	587.93	50	537.93	Warehouse (Main)	Blue	Roll Style
37	7/24/2014	BENCH SCALE	1115.08	200	915.08	Warehouse (Main)	Blue	Incoming Cooler Scale
38	7/29/2014	WAREHOUSE RACKS	629.93	100	529.93	Warehouse (Main)	Blue	tool Racking
39	8/28/2014	CLEAN ROOM ADDITIONS (MOVABLE...)	766.8	50	716.8	Warehouse (main)	Blue	additional Plastic
40	9/2/2014	AIR COMPRESSOR	4758.52	750	4008.52	Warehouse	Blue	
41	3/9/2015	CONVEYOR SYSTEM	16663.53	3000	13663.53	Warehouse (main)	blue	Overhead Conveyer
42	3/9/2015	VATS	43945.75	8000	35945.75	Warehouse (Main)	blue	Next 2 vats - not including the original two
43	3/9/2015	CHILLER	11450	1500	9950	Warehouse (Main)	Blue	One of two original Chillers
44	3/9/2015	TANKS	18369.35	5000	13369.35	Large Cleanroom	Blue	Broken Conical , good large tank ***
45	3/9/2015	WASH TUNNEL	5243.51	800	4443.51	Back Hallway	Blue	
46	3/15/2016	110 RO MINI SPIRAL FILTRATIO SYSTEM	10510	750	9760	Lab	Blue	
47	8/10/2016	STAINLESS STEEL TABLE W/ CASTORS	350	100	250		Blue	General basic steel table
48	9/16/2016	24" X 24" TABLE FOR WAREHOUSE	115	10	105	Large Cleanroom	Blue	Tall Mount For Hopper
49	10/1/2016	BEE MINI30 HOMOGENIZER	64950	0	64950	Small Cleanroom	Blue	Small Homogenizer
50	10/10/2016	JOA MODEL PF-200 PISTON FILLER	6500	0	6500	R&D	Blue	
51	10/10/2016	JACKETED HOPPER W/ STIRER	3900	0	3900	Large Cleanroom	Blue	
52	10/10/2016	CS-13 BAG SEALER SYSTEM	3800	0	3800	R&D	Blue	Blue non-vacuum sealer
53	10/10/2016	ASC CONVEYOR W/ RUBBER BELT	595.99	0	595.99		Blue	Boxed Conveyer
54	10/10/2016	8 CUSTOM STEEL TRAYS	1859	0	1859	R&D	Blue	Small Retort Trays (Metal) specific to packaging
58	10/17/2016	BACK UP GENERATOR	1699.98	0	1699.98	Warehouse (main)	Blue	
59	10/27/2016	4.4 GALLON EXPANSION TANK	760.01	0	760.01	Warehouse (main)	Blue	Pump Here, expansion tank abandoned
60	11/17/2016	2 SCALES	345.75	0	345.75	Large Cleanroom	Blue	
62	5/20/2017	FILTRATION SKID	22391.13	0	22391.13	Large Cleanroom	Blue	
63	7/1/2017	RE-TORT MACHINE	100972	0	100972	R&D	Blue	Small Retort
64	7/17/2017	MOTOR CONTROL FOR SEPARATOR	337.5	0	337.5	Large Cleanroom	Blue	
65	9/13/2017	16 11x8.5 - 3/4" TEFLON ROUTED TRAYS	7585	0	7585	R&D	Blue	New Trays for Small retort (Plastic) specific to packaging
66	1/10/2018	BAND SEALER	1612.92	0	1612.92	R&D	Blue	

Color	Designation	Location Codes
Pink	Lease	Lab
Yellow	Stay With Building	Parking Lot
Blue	Liquidation	Warehouse (Main)
Orange	Broken - Scrap Materials	Back Hallway
Green	BC Electric	R&D
		Small Cleanroom
		Large Cleanroom
		Outback
		Freezer
		Conference Room
		Roof
		ALL

67	1/11/2018	CARDINAL 180 INDICATOR SCALE & 4x4...	995	0	995	Warehouse (main)	Blue	
68	4/10/2018	2.5 TON PALLET JACK	281.44	0	281.44	Warehouse (main)	Blue	
69	6/12/2018	ICE MAKER	2000	0	2000	Back Hallway	Blue	
73	7/31/2018	JACKETED UNITANK & HOSES	5554.15	0	5554.15	Large Cleanroom	Blue	
74	10/10/2018	BOILER	180343.8	10000	170343.8		Blue	Two Units
75	11/13/2018	SEALER AND CAPPER	17550	1500	16050	R&D	Blue	
76	12/9/2018	WELDER	2295	200	2095	Warehouse (main)	Blue	Broken
82	10/30/2019	ELECTRIC FORKLIFT	4000	500	3500	Warehouse (main)	Blue	
83	4/30/2020	PD PROCESS PUMP	2059.14	250	1809.14	Warehouse (main)	Blue	
88	10/2/2020	SELF DUMPING HOPPER	1163.94	200	963.94	Warehouse (main)	Blue	
89	10/15/2020	EQUIPMENT FROM ULMER'S	50375.63	0	50375.63	Warehouse (main)	Blue	
92	12/29/2020	STEEL COR CONVEYOR	396.21	0	396.21	Warehouse (main)	Blue	
141	5/7/2014	DYMO PRINTER	271.39	40	231.39	Warehouse (Main)	Blue	
143	5/23/2014	HONEYWELL VOYAGER 1202G SCANNER	439	50	389	Warehouse (Main)	Blue	
144	6/18/2014	DYMO TWIN TURBO 450 PRINTER	208.35	25	183.35	Warehouse (Main)	Blue	
152	10/3/2014	FINGER PRINT SCANNER	168.3	20	148.3	ALL	Blue	
155	11/18/2016	PARAGON BAR CODE READERS	2164.22	0	2164.22	Conference Room	Blue	Scanner and sticker combined order
164	4/29/2020	HP PRINTER FOR SHIPPING	340.21	25	315.21	Warehouse (Main)	Blue	
165	9/15/2020	UNINTERRUPTED POWER SUPPLY	357.62	25	332.62	Warehouse (Main)	Blue	
166	10/15/2020	VARIABLE FREQUENCY DRIVE	478.58	50	428.58	Warehouse (Main)	Blue	
172	3/10/2014	WATER BATH	257.55	30	227.55		Blue	Gone
173	5/1/2014	3 COMPARTMENT FREEZER	1007.69	200	807.69	Lab	blue	Lab Fridge (mismarked)
174	8/18/2014	2 TUBE CENT STERILE RACKS	330.76	50	280.76	Lab	blue	
175	8/19/2014	NUAIRE BIOLOGICAL SAFETY HOOD	1000	75	925	Lab	blue	
176	8/19/2014	ROBOCYLER 96 PCR MACHINE	350	150	200	Lab	blue	
177	8/19/2014	SPECTRAFLUORE MICRO CENTRIFUGE	325	150	175	Lab	blue	
178	8/19/2014	FISHER UV TRANSLUMINATOR	700	35	665	Lab	blue	
179	8/19/2014	BIORAD POWER SUPPLY	75	20	55	Lab	blue	
180	8/19/2014	VWR CO2 INCUBATOR	300	75	225	Lab	blue	
181	8/20/2014	HOT STIR MACHINE	321.42	50	271.42	Lab	blue	
182	8/20/2014	PH METER	905.14	75	830.14	Lab	blue	
183	8/27/2014	INCUBATOR SHAKER PLATFORM	6203.22	1500	4703.22	Lab	blue	
184	8/27/2014	AUTOClave BASKETS	11600.88	2000	9600.88	Lab	blue	
185	8/29/2014	NIKON E200 MICROSCOPE	5034.04	1250	3784.04	Lab	blue	
186	9/3/2014	TUBE CENTRIFUGE RACK	330.76	50	280.76	Lab	blue	
187	9/12/2014	GLASSWARE & SUPPLIES	7979.87	600	7379.87	Lab	blue	
188	9/17/2014	320 x .001g BALANCE SCALE	1064.2	200	864.2	Lab	blue	
189	10/23/2014	@ WATER SYSTEM	3376.91	400	2976.91	Lab	blue	
190	10/29/2014	OSMOMETER	2495	300	2195	Lab	blue	
191	11/5/2014	MINI SUB V+CEKK GT, GEL CAST 7X10...	418.95	0	418.95	Lab	blue	
192	10/16/2017	TANGENT LAB FILTRATION SYSTEM	661	75	586	Lab	blue	
193	2/13/2018	ROSS ULTRA GLASS PH/ATC ELECT....	613.2	0	613.2	Lab	blue	
194	8/16/2018	LMI UNI-DOSE U031-281TT PUMP	215.94	0	215.94	Lab	blue	
195	8/28/2018	SEWARD STOMACHER 80 BA 7020...	527.83	0	527.83	Lab	blue	
196	9/5/2018	SORVALL RC-5B REFRIGERATED ...	814.98	0	814.98	Lab	blue	
197	1/15/2019	CENTRIFUGE 5430R	8374.37	1200	7174.37	Lab	blue	
199	11/25/2019	NEW LEAF FEEDING PUMP	525.49	50	475.49	Lab	blue	
202	3/13/2020	SLAVIC CREAM SEPARATOR	215.66	10	205.66	Lab	blue	
18	3/7/2014	MILK FILTER	1484.6	25	1459.6	Warehouse (Main)	Orange	disposable filtration module
57	10/10/2016	VIDEOJET 1220	9001.6	0	9001.6		Pink	Leased Domino Brand Misstated
78	5/6/2019	NEW RE-TORT	325610.4	30000	295610.4	Warehouse (main)	Pink	
81	9/15/2019	FILLING MACHINE	139399	15000	124399	Large Cleanroom	Pink	Main Filler in
84	9/25/2020	M700 HOMOGENIZER	114277.7	20000	94277.66	Large Cleanroom	Pink	
87	9/25/2020	2 AV9000 TEMPERATURE RECORDER...	18225.49	1500	16725.49	Warehouse (Main)	Pink	
198	1/15/2019	SPECTAMAX ID5 MICROPLATE READER	49181.39	5000	44181.39	Lab	pink	
200	2/5/2020	QUANTUM STUDIO 5 DNA TESTER	25895.63	1500	24395.63	Lab	pink	
201	2/5/2020	NANODROP SPECTROMETER	16132.6	1600	14532.6	Lab	pink	
13	3/1/2014	SPRINKLER SYSTEM	2453	400	2053	Warehouse (Main)	Yellow	
21	3/25/2014	CARPETING	1203.39	100	1103.39	Warehouse (Main)	Yellow	Entry
24	4/28/2014	DOOR IMPROVEMENT (MOVABLE...	592.93	50	542.93	Small Cleanroom	Yellow	Two White Doors on small cleanroom

55	10/10/2016	BOILER INSTALL & FREIGHT	39998.77	0	39998.77		Yellow	Installation Work
56	10/10/2016	RE-TORT INSTALL & FREIGHT	18807.42	0	18807.42		Yellow	Retort Install Work
77	3/1/2019	VAT MODIFICATIONS	3734.82	0	3734.82	Warehouse (main)	Yellow	
79	9/15/2019	NEW CLEAN ROOM	65395.09	7500	57895.09	Warehouse (main)	Yellow	
80	9/15/2019	HEPA FILTRATON SYSTEM FOR CLEAN...	16284.74	2500	13784.74	Warehouse (main)	Yellow	
85	9/25/2020	COPELAND 10HP COMPRESSOR	5865.69	800	5065.69	Roof	Yellow	
86	9/25/2020	COPELAND 15HP COMPRESSOR	8798.54	1200	7598.54	Roof	Yellow	
90	10/21/2020	SMOKE DETECTOR & MISC	1,435.95	100	1335.95	Warehouse (main)	Yellow	
91	10/21/2020	ACCESS CONTROL HARDWARE FOR...	1892.16	75	1817.16	Warehouse (main)	Yellow	
26	5/12/2014	EVAPORATING COOLING FAN	3765.52	800	2965.52			
61	3/15/2017	FORKLIFT	2340	0	2340			Gone
121	3/21/2019	6 L-SHAPED DESKS	509.22	100	409.22			
122	5/1/2019	TRADE SHOW BOOTH	9361.45	750	8611.45			
123	3/12/2020	4 GLASS & METAL DESKS	1299.35	200	1099.35			
124	7/10/2020	DENON AUDIONIDEO RECEIVER	302.37	50	252.37			
127	3/17/2013	PRINTER	254.55	0	254.55			
128	4/19/2013	COMPUTER	539.99	0	539.99			
129	8/2/2013	LAPTOP COMPUTER	793.13	0	793.13			
130	8/6/2013	PPT PROJECTOR	466.95	0	466.95			
131	9/9/2013	COMPUTERS	1149.98	0	1149.98			
132	12/13/2013	PRINTER	299.99	20	279.99			
133	2/25/2014	HP PAVILLION 23 COMPUTER	799.99	100	699.99			
134	3/6/2014	DESK TOP COMPUTER	806.99	100	706.99			
139	3/21/2014	2 LAPTOP COMPUTERS	1844.97	200	1644.97			
140	3/24/2014	APPLE IPHONE & ACCESSORIES	902.9	100	802.9			
142	5/20/2014	HP PAVILLION COMPUTER	799.99	75	724.99			
145	7/3/2014	COMPUTER MONITOR	119.99	15	104.99			
146	7/28/2014	HP OJ6700 PRINTER/ FAX	1874.97	200	1674.97			
147	8/11/2014	HP PAVILLION COMPTER	749.99	100	649.99			
148	8/11/2014	HP 110-210 DESKTOP COMPUTER	279.99	50	229.99			
149	9/30/2014	BAR TENDER AUTOMATION PRINTER. ..	750	50	700			
150	10/1/2014	HP PAVILLION COMPUTER	649.99	80	569.99			
151	10/2/2014	HP PAVILLION COMPUTER	749.99	100	649.99			
153	10/14/2014	HP PAVILLION COMPUTER	699.99	75	624.99			
154	10/20/2014	4 HP PAVILLION COMPUTERS	2799.96	400	2399.96			
156	8/22/2017	DELL INSPIRON 13 7000 LAPTOP...	584.36	0	584.36			
157	11/9/2017	ASUS LAPTOP COMPUTER	864.92	75	789.92			
158	1/2/2018	HP COLOR LASER JETPRO MFP	342.04	0	342.04			
159	4/11/2018	HP 15-aq273 LAPTOP COMPUTER	809.61	0	809.61			
160	5/1/2018	DELL INSPIRON 3263 COMPUTER	541.24	0	541.24			
161	12/13/2018	DELL INSPIRON 24-377 COMPUTER	757.74	100	657.74			
162	12/21/2018	DELL INSPIRON 15-5000 COMPUTER	557.42	75	482.42			
163	4/4/2020	ACCOUNTING LAPTOP COMPUTER	758.61	50	708.61			
169	11/14/2017	HP15-BS033CL COMPUTER	490.86	50	440.86			
207	3/31/2020	ICE MAKER	594.94	75	519.94			
208	5/6/2020	THEMO SCIENTIFIC LABORATORY...	4018.88	750	3268.88			
210	4/1/2018	1989 DODGE RAM 1500 TRUCK	4000	0	4000			
211	9/14/2020	FORD F-150 TRUCK (BLACK)	10000	2000	8000			
214	11/1/2016	CEILING INSULATION	5276.8	0	5276.8			
215	4/12/2018	SINK FOR CLEAN ROOM	5004.82	0	5004.82			
216	11/9/2018	HIGH LED LIGHTING	2300	200	2100			
217	11/12/2018	FINGER PRINT ELECTRONIC ACCESS	489.98	25	464.98			
218	3/1/2019	FIRE SPRINKLER SYSTEM	11810	1000	10810			
219	4/1/2019	LEASEHOLD IMPROVEMENTS	113450.8	0	113450.8			
220	9/3/2020	2 RING CENTRAL VIDEO DOOR BELLS	1089.1	75	1014.1			
221	9/3/2020	SECURITY GATE	2486.12	500	198.61			
224	3/16/2021	EXTERIOR REMODEL	71225.14	0	71225.14			
95	9/4/2020	REFRIDGERANT RECOVERY	647.50	100.00	547.50			
96	9/28/2020	DELTA 10" TABLE SAW	648.42	100.00	548.42			
97	9/28/2020	CHOP SAW	433.16	75.00	358.16			
98	11/9/2020	Work Stand	193.99	25.00	168.99			
101	12/11/2013	OFFICE FURNITURE	2,961.94	500.00	2,461.94			
102	12/17/2013	OFFICE DESK	746.99	125.00	621.99			
103	1/10/2014	OFFICE FURNIURE	282.97	40.00	242.97			
104	4/3/2014	CELL PHONE	292.20	25.00	267.20			
105	7/2/2014	FILE CABINET	153.99	50.00	103.99			
106	7/2/2014	TELEPHONE	99.99	20.00	79.99			
107	7/14/2014	4 SHELF STORAGE CABINET	245.98	30.00	215.98			
108	8/13/2014	DESK&HUTCH	580.97	100.00	480.97			
109	8/22/2014	DESK& HUTCH	580.97	100.00	480.97			
110	8/27/2014	OFFICE CHAIR	59.99	10.00	49.99			

## EXHIBIT 6

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into as of the date all signatories below have executed the Agreement (the “Effective Date”) by Brian D. Shapiro, in his capacity as Chapter 7 Trustee (the “Trustee”) on behalf of Medolac Laboratories, A Public Benefit Corporation’s bankruptcy estate (“Bankruptcy Estate”), on the one hand, and Doug Hughes or his assignee (“Hughes”), on the other. Hughes and Trustee are collectively the “Parties,” and each individually is a “Party.”

### RECITALS

This Agreement is entered into with reference to the following facts and recitals which are true to the best of the Parties' knowledge and belief, and are made part of this Agreement:

WHEREAS, Medolac Laboratories, A Public Benefit Corporation (“Debtor”) filed for relief under Subchapter V of Chapter 11 of the Bankruptcy Code on March 16, 2021, in the Bankruptcy Court for the District of Nevada (“Bankruptcy Court”), Case No. 21-11271-abl (“Bankruptcy Case”).

WHEREAS, Trustee was appointed as the Subchapter V trustee in the Bankruptcy Case.

WHEREAS, Hughes is the debtor-in-possession lender under that Debtor in Possession Loan and Security Agreement dated March 18, 2021 (“DIP Loan Facility”), entered into between the Debtor and Hughes which was approved by the Bankruptcy Court by Interim Order entered in the Bankruptcy Case on March 30, 2021 [*Docket No. 52*] and by Final Order entered in the Bankruptcy Case on April 26, 2021 [*Docket No. 90*], granting Hughes a super-priority administrative claim and a first priority security interest all assets of the Debtor (the “Collateral”).

WHEREAS, Debtor defaulted under the terms of the DIP Loan Facility and Hughes issued a Notice of Default on July 6, 2021 to Debtor, Trustee and the Office of the United States Trustee.

WHEREAS, the Bankruptcy Case was converted to a Chapter 7 proceeding by Bankruptcy Court orders entered on July 7, 2021 [*Docket Nos. 234 & 236*] and the Trustee was appointed the Chapter 7 Trustee in the Bankruptcy Case.

WHEREAS, Debtor’s business operations have been closed since July 2, 2021.

WHEREAS, since his appointment as Chapter 7 trustee, Trustee has attempted to generate interest in an asset sale process with respect to the Collateral and has sought out potential bidders. However, to date, Trustee has not received any bid proposals.

WHEREAS, Hughes began his strict foreclosure of the Collateral by issuing a Notice of Proposal to Accept Collateral in Full Satisfaction of Secured Obligation on July 14, 2021

("Foreclosure Notice"). As set forth in the Foreclosure Notice, Hughes is owed in excess of \$599,336.14 under the terms of the DIP Loan Facility.

WHEREAS, the Bankruptcy Estate has approximately \$171,218.00 in cash which Hughes maintains is part of the Collateral.

WHEREAS, Trustee has learned of certain causes of action that the Bankruptcy Estate may have against Prolacta and/or the Federal Drug Administration ("FDA") that Trustee wishes to investigate and possibly pursue, and which Hughes maintains is part of the Collateral.

WHEREAS, Trustee disputes the extent of Hughes lien in certain other assets of the Bankruptcy Estate, including, but not limited to accounts receivable, which Hughes maintains is part of the Collateral.

WHEREAS, Trustee has asserted that the Bankruptcy Estate may object to Hughes Foreclosure Notice and seek to stay any strict foreclosure pending a Bankruptcy Court resolution of these issues (the "Disputes"). The deadline for which the Trustee has to object to Hughes acceptance of the Collateral in full satisfaction of the secured obligation under the DIP Loan Facility as set forth in the Foreclosure Notice is August 3, 2021.

WHEREAS, after further discussions, the Trustee, on behalf the Bankruptcy Estate, and subject to Bankruptcy Court approval, is willing to resolve the Disputes on the terms and conditions set forth in this Agreement.

WHEREAS, the Parties agree that it is in their mutual interests to avoid the uncertainty and expense of litigating the Disputes by reaching a settlement and accommodation of the certain matters encompassed herein, without any admission of law or fact.

WHEREAS, the Trustee believes the resolution of the Disputes on the terms and conditions set forth in this Agreement is fair, reasonable, adequate, and in the best interests of the Bankruptcy Estate. Hughes denies the claims asserted by the Trustee with respect to the Disputes, and denies any wrongdoing or liability, but is concerned that the value of the collateral continues to deteriorate given the closure of Debtor's business operations and desires to resolve the Disputes and complete the strict foreclosure of the Collateral as soon as possible on the terms and conditions set forth below in order to avoid the burden, and expense of future delay and/or litigation.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

## **TERMS AND RELEASES**

### **1. SETTLEMENT PROVISIONS**

**A. Agreement Execution.** Within three (3) business days from the date of request by counsel for Hughes, Trustee, shall execute two original counterparts of this

Agreement and deliver one original counterpart and a completed W-9 tax form to Hughes' Counsel identified below.

- B. Bankruptcy Court Approval.** This Agreement is subject to, and shall not become effective, until it is approved by written order of the Bankruptcy Court in the above-mentioned Bankruptcy Case upon such notice as may be required. Within three (3) business days of full execution of this Agreement, the Trustee shall file the appropriate motion in the Bankruptcy Case seeking Bankruptcy Court approval of this Agreement pursuant to Bankruptcy Rule 9019 which shall include the appropriate request pursuant to 11 U.S.C. § 363(b) on an expedited basis.
- C. Payment by Hughes.** Conditioned upon full execution of this Agreement, submission by Trustee to Hughes of a completed and executed Form W-9 and after Bankruptcy Court approval of this Agreement, Hughes shall pay to Trustee a total of Seven Hundred and Fifty Thousand Dollars (\$750,000.00) ("Settlement Amount") as follows:
- (i) \$300,000.00 by wire to Trustee on the earlier of the effective date of strict foreclosure on the Collateral or August 31, 2021; and
  - (ii) \$450,000.00 by wire to Trustee on or before August 31, 2021.
- D. Retention of Assets by the Bankruptcy Estate.** The Bankruptcy Estate shall retain the following assets subject to the provisions of section 1.E. below and said retained assets shall not be included in the Collateral ("Retained Assets"):
- (i) Any and all claims or causes of action against Prolacta ("Prolacta Claims") (for avoidance of doubt, any claims against the FDA shall be deemed a part of the Collateral);
  - (ii) All cash held by Debtor in any account;
  - (iii) All Chapter 5 avoidance claims or causes of action; and
  - (iv) All Debtor's accounts receivable.
- E. Sharing Proceeds from Retained Assets with Hughes.** The Trustee, on behalf of the Bankruptcy Estate shall share proceeds from the administration and/or disposition of the Retained Assets with Hughes as follows:
- (i) 50% of all cash held by Debtor in any account;
  - (ii) 50% of the net proceeds from Prolacta Claims after payment of fees and costs related to litigating these claims or causes of action; and

(iii) 50% of the net proceeds from Debtor's accounts receivable after payment of costs and expenses incurred in collecting the accounts receivable.

- F. Assignment of Prolacta Claims and Administration.** After investigation, if the Bankruptcy Estate elects not to pursue the Prolacta Claims or fails to administer the Prolacta Claims within 18 months from the date of this Agreement, the Trustee shall assign the Prolacta Claims to Hughes or his assignee. Trustee shall consult with Hughes concerning the resolution or disposition of any Prolacta Claims.
- G. Extension of Hughes Strict Foreclosure.** To the extent that the Bankruptcy Court does not approve this Agreement, then Hughes' (or his assignee) pursuant to the terms of the DIP Loan Facility, shall not seek to complete its strict foreclosure on the Collateral any earlier than six (6) days after entry of an order disapproving this Agreement. To the extent that the Bankruptcy Court approves this Agreement, then upon entry of such order, Hughes (or his assignee) may immediately complete its strict foreclosure on the Collateral.
- H. Trustee's Consent to Hughes Strict Foreclosure of Collateral.** The Trustee, on behalf of the Debtor and the Bankruptcy Estate shall not object to Hughes' (or his assignee's) strict foreclosure and acceptance of the Collateral, hereby consents to the same and shall take any reasonable action in response to any reasonable request from Hughes to facilitate the same. The strict foreclosure of the Collateral will be deemed in full satisfaction of Hughes' secured obligation under the DIP Loan Facility owed by the Debtor.
- I. Full Satisfaction.** The Settlement Amount is in full satisfaction of each and every claim that could be asserted against Hughes by Debtor and/or the Bankruptcy Estate and it includes all attorneys' fees and costs that Trustee, Debtor and/or the Bankruptcy Estate may have incurred in connection with the Bankruptcy Case.
- J. Trustee's Release.** For consideration of the Settlement Amount, the receipt and sufficiency of which are hereby expressly acknowledged, the Trustee on behalf of Debtor and the Bankruptcy Estate (for purposes of this paragraph only collectively "Estate Releasers") except for the obligations stated within this Agreement, unconditionally and irrevocably remises, waives, satisfies, releases, acquits, and forever discharges Hughes and his, predecessors, successors, assigns, assignees, affiliates, partners, joint ventures, co-venturers, attorneys, vendors, accountants, nominees, agents (alleged, apparent or actual), representatives, employees, managers, and/or each person or entity acting or purporting to act for him or on his behalf and all of its subsidiaries and affiliates (for purposes of this paragraph only collectively the "Hughes Releasees"), and each of them respectively, from and against any and all past and present claims, counterclaims, actions, defenses, affirmative defenses, suits, rights, causes of action, lawsuits, set-offs, costs, losses, controversies, agreements, promises and demands, or liabilities, of whatever kind or character, direct or indirect, whether known or unknown or capable of being known, arising at law or in equity, by right of action or otherwise, including, but not limited to, suits, debts, accounts, bills,

damages, judgments, executions, warranties, attorneys' fees, costs of litigation, expenses, claims and demands whatsoever that the Estate Releasors, or their attorneys, agents, representatives, predecessors, successors and assigns, have or may have against the Hughes Releasees, for, upon, or by reason of any matter, cause or thing, whatsoever, in law or equity, including, without limitation, the claims made or which could have been made by the Trustee, Debtor or the Bankruptcy Estate arising from the Bankruptcy Case, the DIP Loan Facility, the Disputes, as well as any claim or issue which was or could have been brought in the Bankruptcy Case (collectively "**Estate Released Matters**").

**K. Hughes' Release.** For consideration of entering into this Agreement, the receipt and sufficiency of which are hereby expressly acknowledged Hughes (for purposes of this paragraph only collectively "**Hughes Releasors**"), except for the obligations stated within this Agreement and any future distribution that could be made to equity holders of the Debtor, unconditionally and irrevocably remises, waives, satisfies, releases, acquits, and forever discharges the Bankruptcy Estate, the Debtors, the Subchapter V Trustee, the Trustee and its, predecessors, successors, assigns, assignees, affiliates, partners, joint ventures, co-venturers, attorneys, vendors, accountants, nominees, agents (alleged, apparent or actual), representatives, employees, managers, and/or each person or entity acting or purporting to act for him or on his behalf and all of its subsidiaries and affiliates (for purposes of this paragraph only collectively the "**Estate Releasees**"), and each of them respectively, from and against any and all past and present claims, counterclaims, actions, defenses, affirmative defenses, suits, rights, causes of action, lawsuits, set-offs, costs, losses, controversies, agreements, promises and demands, or liabilities, of whatever kind or character, direct or indirect, whether known or unknown or capable of being known, arising at law or in equity, by right of action or otherwise, including, but not limited to, suits, debts, accounts, bills, damages, judgments, executions, warranties, attorneys' fees, costs of litigation, expenses, claims and demands whatsoever that the Hughes Releasors, or their attorneys, agents, representatives, predecessors, successors and assigns, have or may have against the Estate Releasees, for, upon, or by reason of any matter, cause or thing, whatsoever, in law or equity, including, without limitation, any claims made or which could have been made by Hughes arising from the Bankruptcy Case, the DIP Loan Facility, the Disputes, as well as any claim or issue which was or could have been brought in the Bankruptcy Case (collectively "**Hughes Released Matters**").

## 2. **ADDITIONAL TERMS**

**A. Adequate Consideration.** The consideration received in connection with this Agreement is fair, adequate and substantial and consists only of the terms set forth in this Agreement.

**B. Covenant Not to Sue.** The Trustee and Hughes agree not to cause claims to be made in any court or other forum against the Parties for any matter within the scope of the releases contained herein.

- C. Further Assurances.** Each Party agrees to take all reasonable steps necessary to effectuate the terms of this Agreement.
- D. No Admission of Liability.** Each of the Parties understands and agrees that this Agreement and the settlement provided for herein, are intended to compromise disputed claims and defenses, to avoid litigation and to buy peace, and that this Agreement and the settlement provided for herein shall not be construed or viewed as an admission by any Party of liability or wrongdoing, such liability being expressly denied. This Agreement, and the settlement provided for herein, shall not be admissible in any lawsuit, administrative action, or any judicial or administrative proceeding if offered to show, demonstrate, evidence or support a contention that any of the Parties acted illegally, improperly, or in breach of law, contract or proper conduct.
- E. Waiver.** The failure of the Trustee to demand from Hughes performance of any act under the Agreement shall not be construed as a waiver of a the Trustee's right to demand, at any subsequent time, such performance. The failure of Hughes to demand from Trustee performance of any act under the Agreement shall not be construed as a waiver of Hughes' right to demand, at any subsequent time, such performance.
- F. Tax Consequences.** The Trustee agrees that if it is later determined by the Internal Revenue Service or any other taxing body that taxes of any type should have been paid in connection with any benefit they receive pursuant to this Agreement, they will be solely responsible for paying such taxes. Hughes makes no representation or warranty regarding the legal effect or tax consequences of this Agreement, or of any such filing or reporting by Hughes. The Trustee further expressly acknowledges that he neither received nor relied upon any tax advice from the Hughes or his representatives and attorneys.
- G. Choice of Law.** This Agreement shall be construed in accordance with and all disputes hereunder shall be controlled by the laws of the State of Nevada without regard to Nevada's choice of law rules and the United States of America.
- H. Hughes' Counsel.** As used in this Agreement, the phrase "Hughes' Counsel" means Severson & Werson, APC, Donald H. Cram, Esq., One Embarcadero Center, 26th Floor, San Francisco, California 94111.
- I. No Interpretation of Captions or Headings.** The captions and headings within this Agreement are for ease of reference only and are not intended to create any substantive meaning or to modify the terms and clauses either following them or contained in any other provision of this Agreement.
- J. Severability.** If any provision of the Agreement or the application thereof is held invalid by a court, arbitrator or government agency of competent jurisdiction, the Parties agree that such a determination of invalidity shall not affect other provisions

or applications of the Agreement which can be given effect without the invalid provisions and thus shall remain in full force and effect or application.

- K. Neutral Interpretation and Counterparts.** The Parties shall be deemed to have cooperated in the drafting and preparation of this Agreement. Hence, any construction to be made of this Agreement shall not be construed against any Party. This Agreement may be executed in counterparts and each executed counterpart shall be effective as the original. All faxed, emailed, or electronic signatures affirming this Agreement constitute an original signature.
- L. Integration / Single Agreement.** This Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties, and the terms of the Agreement are contractual and not merely recitals. There is no other agreement, written or oral, expressed or implied between the Parties with respect to the subject matter of this Agreement and the Parties declare and represent that no promise, inducement or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them or upon which they have relied in any way. The terms and conditions of this Agreement may not be contradicted by evidence of any prior or contemporaneous agreement, and no extrinsic evidence may be introduced in any judicial proceeding to interpret this Agreement.
- M. Amendments to the Agreement.** This Agreement shall not be altered, amended or modified by oral representation made before or after the execution of this Agreement. All amendments or changes of any kind must be in writing, executed by all Parties.
- N. Authority.** Trustee represents and warrants that he has not sold, transferred, conveyed, assigned, or otherwise disposed of any right, title or interest in any of the Estate Released Matters herein to any person or entity, and that Trustee is not aware of any other person or entity who may have or who has asserted or can assert a right, title, or interest in any of the Estate Released Matters covered by this Agreement. Trustee further affirms that he is fully capable of executing this Agreement and understand its contents and further that he has legal counsel of his own choice or that he has had an opportunity to obtain such legal counsel to explain the legal effect of signing this Agreement.
- O. Advice of Counsel.** Each Party to this Agreement acknowledges that it has had the benefit of advice of competent legal counsel or the opportunity to retain such counsel with respect to its decision to enter into this Agreement. The individuals whose signatures are affixed to this Agreement in a personal or representative capacity represent that they are competent to enter into this Agreement and are doing so freely and without coercion by any other Party or non-party hereto.
- P. Successors.** This Agreement shall inure to the benefit of the respective heirs, successors, and assigns of the Parties, and each and every one of the Releasees shall be deemed to be intended third-party beneficiaries of this Agreement.

**Q. Attorneys' Fees.** Unless otherwise expressly set forth herein, each of the Parties shall bear its own attorney's fees, costs, and expenses in connection with the matters set forth in the Agreement, including, but not limited to, the Litigation and the negotiations and preparation of this Agreement. However, if any Party institutes legal proceedings over the enforcement of this Agreement or any provision of it, the prevailing Party shall be entitled to recover from the losing Party its costs, including reasonable attorneys' fees, at both the trial and appellate levels.

**R. Waiver of Trial by Jury.** The Parties knowingly, voluntarily and intentionally waive the right they may have to a trial by jury in respect to any litigation based hereon, or arising out of, under or in connection with this Agreement, any document contemplated to be executed, or any underlying matter, course of dealing, statement (whether verbal or written) or action of the Parties.

**S. Jurisdiction.** The Parties agree that the Bankruptcy Court shall have sole and exclusive jurisdiction to interpret and enforce the terms of this Agreement. In the event any proceeding is commenced to interpret or enforce this Agreement, it shall be commenced in the Bankruptcy Case. If the Bankruptcy Case is closed, the aggrieved party shall move to reopen the Bankruptcy Case.

IN WITNESS WHEREOF, the Parties hereto evidence their agreement as a sealed instrument and have executed this Agreement as of the day and year first below written.

**BRIAN D. SHAPIRO, TRUSTEE**

Name: 

Date: 7-16-2021

**DOUG HUGHES**

Name: 

Date: 7-15-21

## **AMENDMENT TO SETTLEMENT AGREEMENT AND RELEASE**

On July 16, 2021, Brian D. Shapiro, in his capacity as Chapter 7 Trustee (the "Trustee") on behalf of Medolac Laboratories, A Public Benefit Corporation's bankruptcy estate ("Bankruptcy Estate"), on the one hand, and Doug Hughes or his assignee ("Hughes"), on the other entered into a Settlement Agreement and Release ("Agreement"). The Agreement is incorporated within this amendment as if fully stated herein. Hughes and Trustee are collectively the "Parties," Such Agreement is hereby amended to add the following terms:

The Parties agree that:

1. Unless otherwise revised herein, all terms of the Agreement remain unchanged and are deemed to be enforceable.
2. The Parties acknowledge that the Trustee has the responsibility to maximize recovery and value to the Bankruptcy Estate for the benefit of the creditors of the Bankruptcy Estate. The Parties acknowledge that the Trustee has received inquiries from third parties about the assets of the Bankruptcy Estate and may receive additional inquiries. The Trustee may need to respond to such inquiries. Accordingly, nothing contained in this Agreement shall prevent the Trustee from furnishing information, or entering into discussions or negotiations, with, any person or entity in connection with an inquiry by a third party interested in purchasing the assets of the Bankruptcy Estate, entering into an agreement with a third party in purchasing the assets of the Bankruptcy Estate and filing a motion seeking such approval of such agreement.
3. In the event the Trustee enters into an agreement with a third party for the purchase of assets of the Bankruptcy Estate and files a motion seeking approval of such agreement, Hughes shall have the right to terminate the Agreement and the Bankruptcy Estate shall reimburse Hughes for expenses incurred in preserving the Bankruptcy Estate's assets in the amount of \$75,000.00.
4. The Agreement is subject to Bankruptcy Court approval and the Trustee shall request the Bankruptcy Court to hear such matter on shorten time. However, the Parties acknowledge that the request for shorten time is subject to the approval by the Bankruptcy Court. Accordingly, the date of such hearing and/or the decision on the motion to approve this Agreement is not within the control of the Trustee. If the Bankruptcy Court does not approve the request for shorten time, then the Trustee shall set such motion to approve this Agreement on such date and time provided by

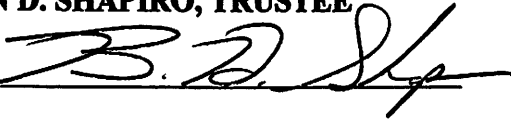
the Bankruptcy Court through regular court calendaring procedures and Hughes shall have the right to terminate the Agreement.

5. The Parties acknowledge that the Court may not make an immediate decision after hearing the motion to approve this Agreement. To the extent that the Bankruptcy Court does not enter an order approving this Agreement prior to August 31, 2021, then payment of the entire \$750,000.00 to the Trustee by Hughes shall be due and owing the earlier of ten (10) days after entry of an order approving the Agreement or the effective date of foreclosure on the Collateral as defined under the Agreement.

IN WITNESS WHEREOF, the Parties hereto evidence their agreement as a sealed instrument and have executed this Amendment as of the day and year first below written.

**BRIAN D. SHAPIRO, TRUSTEE**

Name: \_\_\_\_\_

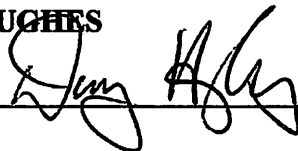


Date: \_\_\_\_\_

7-19-2021

**DOUG HUGHES**

Name: \_\_\_\_\_



Date: \_\_\_\_\_

7-19-21